

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: May 28, 2020

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ANA SEVERINO,

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UNPUBLISHED

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Petitioner,

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No. 18-09V

*

v.

*

Special Master Gowen

*

SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

Damages Decision Based on Proffer;

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Tetanus-diphtheria-pertussis

*

("Tdap"); Shoulder Injury Related to

Respondent.

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Vaccine Injury ("SIRVA").

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Shealene P. Mancuso, Muller Brazil, LLP, Dresher, PA, for petitioner.

Lisa A. Watts, Department of Justice, Washington, D.C., for respondent.

DECISION AWARDING DAMAGES¹

On January 2, 2018, Ana Severino ("petitioner") filed a petition under the National Vaccine Injury Compensation Program (the "Vaccine Act" or the "Vaccine Program").² Petitioner alleges that she received a tetanus-diphtheria-pertussis ("Tdap") vaccine on January 20, 2015, which was the actual cause of her developing a Shoulder Injury Related to Vaccine Administration ("SIRVA"). Petition at Preamble (ECF No. 1).

On December 4, 2019, a fact hearing was held via videoconference to determine onset of petitioner's pain in her left shoulder and if her injury continued for a period of six months or more, as required by the Vaccine Act. Hearing Order (ECF No. 26); Transcript (ECF No. 31). On January 24, 2020, the undersigned issued a Finding of Fact Ruling. Findings of Fact (ECF

¹ Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. §3501 note (2012), **because this ruling contains a reasoned explanation for the action in this case, I intend to post it on the website of the United States Court of Federal Claims.** The court's website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. Before the ruling is posted on the court's website, each party has 14 days to file a motion requesting redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). "An objecting party must provide the court with a proposed redacted version of the decision." *Id.* **If neither party files a motion for redaction within 14 days, the ruling will be posted on the court's website without any changes. *Id.***

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 to 34 (2012). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

No. 33). On May 15, 2020, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA.

On May 28, 2020, respondent filed a proffer on award of compensation (“Proffer”). Proffer (ECF No. 40). The Proffer indicated that petitioner should be awarded a total of \$72,947.40, consisting of \$72,500.00 for petitioner’s past and future pain and suffering and \$447.40 for past unreimbursable expenses. Proffer at 1. In the Proffer, respondent states that this represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. §300aa-15(a). *Id.* Additionally, respondent states that petitioner agrees with the proffer award. *Id.*

Based on the record as a whole, I find that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the Proffer, **I award petitioner a lump sum of payment of \$72,947.40 in the form of a check payable to petitioner.** This amount represents compensation for all damages that would be available under §15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Thomas L. Gowen
Thomas L. Gowen
Special Master

³ Entry of judgment is expediated by each party’s filing notice renouncing the right to seek review. Vaccine Rule 11(a).

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

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|--|---|----------------------|
| ANA SEVERINO, |) | |
| |) | <u>ECF</u> |
| Petitioner, |) | |
| |) | |
| v. |) | No. 18-09V |
| |) | Special Master Gowen |
| SECRETARY OF HEALTH AND HUMAN SERVICES, |) | |
| |) | |
| |) | |
| Respondent. |) | |
| |) | |

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On May 15, 2020, the Court issued a Ruling on Entitlement finding that Ana Severino (“petitioner”) suffered a left shoulder injury related to vaccine administration (“SIRVA”), a Table injury, following receipt of a tetanus, diphtheria, acellular-pertussis (“Tdap”) vaccine administered to her on January 20, 2015. Respondent now Proffers the following regarding the amount of compensation to be awarded.¹

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded a total of \$72,947.40 consisting of \$72,500.00 for her past and future pain and suffering and \$447.40 for past unreimbursable expenses. This represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).² Petitioner agrees.

¹ The parties have no objection to the proffered award of damages. However, respondent reserves his right to seek review of the Special Master’s decision pursuant to 42 U.S.C. § 300aa-12(e)(1).

² Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future damages.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through a lump sum payment of \$72,947.40 in the form of a check payable to petitioner.³

Petitioner agrees.

Respectfully submitted,

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Assistant Attorney General

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Acting Director
Torts Branch, Civil Division

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s/Lisa A. Watts
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DATED: May 28, 2020

³ Petitioner is a competent adult. Proof of guardianship is not required in this case.